



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

June 2013

### **Limited English Proficiency Policy Statement**

It is the policy of the United States Department of Transportation not to discriminate against any person who is limited English proficient (LEP). In accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166, the Department will take reasonable steps to provide LEP persons meaningful access to its programs and activities. This commitment applies to all of the Department's federally conducted programs and activities.

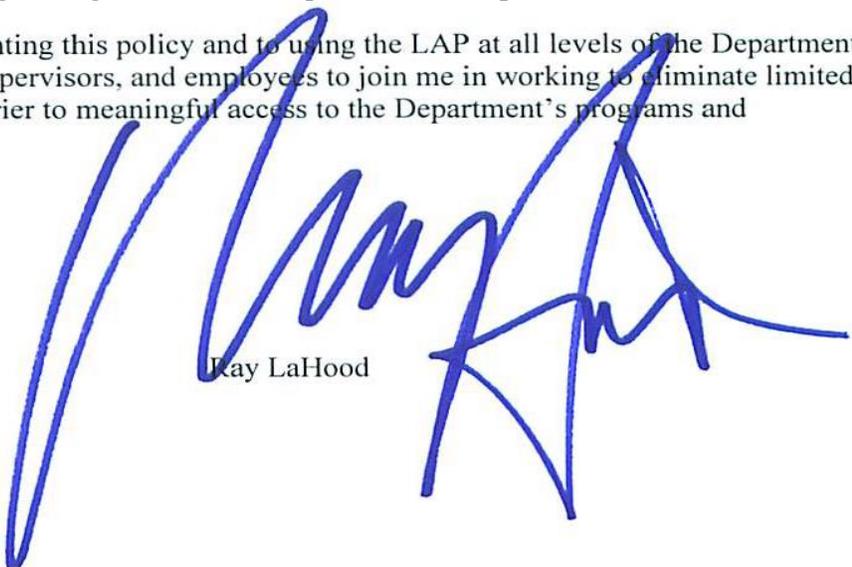
The Department hereby adopts a Language Access Plan (LAP) which articulates the Department's responsibilities, policies, and strategies for providing language assistance services to LEP persons. The LAP applies to all Operating Administrations (OAs), to the Office of the Secretary of Transportation (OST), and to all subdivisions of either. We intend for the LAP to evolve as we learn more about the Department's many interactions with LEP persons and groups, and as we gain experience in providing language assistance services.

Providing appropriate language assistance will require identifying critical points of interaction with the LEP public, assessing LEP communities' particular language assistance needs, and determining, with specificity, how each OA will ensure meaningful access for LEP persons. The Department recognizes that many of these tasks are best addressed by the OAs, which often have more direct contact with the persons and communities requiring language assistance. The LAP is a general framework within which OAs may develop more targeted solutions to the challenge of providing effective language assistance services. To spur the process, I direct each OA Administrator to issue a memorandum:

- 1) emphasizing the importance of providing appropriate language-based access to the OA's programs and activities;
- 2) setting forth the OA's language access policy; and
- 3) assigning and naming managers and staff responsible for implementation.

I am committed to implementing this policy and to using the LAP at all levels of the Department. I encourage all managers, supervisors, and employees to join me in working to eliminate limited English proficiency as a barrier to meaningful access to the Department's programs and activities.

Ray LaHood



# **U.S. Department of Transportation Language Access Plan**

June 2013

## **1. GENERAL LANGUAGE ACCESS POLICY**

### **a. Policy Statement**

1. It is the policy of the U.S. Department of Transportation (DOT or Department) that the Department's staff take reasonable steps to provide limited English proficient (LEP) persons meaningful access to all DOT programs and activities. The application of this policy extends to federally conducted activities of all DOT modal operating administrations (OAs), regional offices, divisions, and staff of DOT, and to all the programs and activities conducted by entities receiving funding from DOT.

2. One principle behind this policy is that it is the responsibility of DOT, and not the LEP person, to take reasonable steps to ensure that communications between DOT and the LEP person are not impaired as a result of the limited English proficiency of the individual.

3. DOT staff must take reasonable steps to inform the public of the availability of language accessible programs and activities.

### **b. Purpose and Authority**

The purpose of this Language Access Plan (LAP or Plan) is to make reasonable efforts to eliminate or reduce barriers to DOT programs and activities for people who have a limited ability to speak, write, and/or understand the English language. The Departmental Office of Civil Rights (DOCR) Language Access Working Group (LAWG or Group) developed this Plan. The Group consists of representatives from across the Department, including OAs, DOCR, and other leadership offices concerned with this policy.

This Plan establishes guidelines in accordance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," 65 Fed. Reg. 50,121 (Aug. 16, 2000) and related U.S. Department of Justice (DOJ) Policy Guidance issued the same day, "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency," 65 Fed. Reg. 50,123, including revised guidance issued June 18, 2002, 67 Fed. Reg. 41,455 (hereafter, DOJ Guidance). It is necessary for DOT staff to make reasonable efforts to provide timely language assistance services to ensure

that LEP individuals have substantially equal and meaningfully effective access to the Department's programs and activities.<sup>1</sup>

### c. Definitions

1. *Direct "In-Language" Communication* – Monolingual communication in a language other than English between a multilingual staff and an LEP person (e.g., Korean to Korean).
2. *Component* – Individual OAs, offices within the Office of the Secretary of Transportation (OST), and other constituent administrations, departments, divisions, groups, and/or offices within DOT and the OAs.
3. *Effective Communication* – Communication sufficient to provide the LEP individual with substantially the same level of access to services, programs, and benefits received by individuals who are not LEP. For example, staff must take reasonable steps to ensure that communication with an LEP individual is as effective as communication with others when providing similar programs, benefits, and services.
4. *Interpretation* – The act of listening to a communication in one language (source language) and *orally* converting it to another language (target language) while retaining the same meaning.
5. *Language Assistance Services* – Oral and written language services needed to assist LEP individuals to communicate effectively with staff, and to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in, the services, benefits, activities, or other programs administered by the Department.
6. *Limited English Proficient (LEP) Individuals* – Individuals who do not speak English as their primary language and have a limited ability to read, write, speak, and/or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).<sup>2</sup>

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<sup>1</sup> Regarding timeliness, the DOJ Guidance provides that “[w]hile there is no single definition for ‘timely’ applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person.” 67 Fed. Reg. at 41,461.

<sup>2</sup> The Department has determined that Executive Order 13166 applies only to persons who are located within the United States and its territories, and does not apply extraterritorially.

7. *Meaningful Access* – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual.<sup>3</sup> For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.
8. *Multilingual staff or employee* – A staff person or employee who has demonstrated proficiency in English and in reading, writing, speaking, or understanding at least one other language, as authorized by his or her component.
9. *Primary Language* – An individual’s primary language is the language in which an individual most effectively communicates.
10. *Program, Service, Benefit, or Activity* – The term “program,” “service,” “benefit,” or “activity” applies to the primary functions of all of the operations of DOT.<sup>4</sup>
11. *Qualified Translator or Interpreter* – An in-house or contracted translator or interpreter who demonstrates his/her competence to interpret or translate through court certification or is authorized to do so by contract with the DOT or by approval of his or her component.
12. *Sight Translation* – Oral rendering of written text into spoken language by an interpreter without change in meaning based on a visual review of the original text or document.
13. *Translation* – The replacement of a word, phrase, or text in one language (source language) with an equivalent-meaning word, phrase, or text in another language (target language).
14. *Vital Document* – Paper or electronic written material that contains information that is critical for accessing a component’s programs, services, benefits, or activities; directly and substantially related to public safety; or required by law.

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<sup>3</sup> When Federal rules or statutes allow for recovery of fees against a losing party to a court proceeding, it is the policy of DOT not to seek recovery of costs for language assistance services if doing so would result in discrimination against LEP individuals.

<sup>4</sup> For the purposes of this Plan, the definition of “program or activity” is identical to that used under the regulations implementing Section 504 of the Rehabilitation Act of 1973: “[A] federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by the regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public’s use of the Department’s facilities (cafeteria, library). Activities in the second category include programs that provide Federal services or benefits (immigration activities, operation of the Federal prison system).” 28 C.F.R. § 39.102.

Component language access plans may supplement these definitions with additional terms or definitions consistent with these definitions and with the objective of timely providing LEP persons with substantially equal and meaningfully effective access to Department programs and activities.

#### **d. Scope of Policy/Staff Compliance**

Departmental staff should take reasonable steps to provide language assistance services to LEP individuals when they encounter or have reason to believe that they may encounter LEP individuals.<sup>5</sup> Subject to guidelines set forth herein, Department staff should take reasonable steps to provide language assistance services upon request by an LEP person who wishes to access DOT programs or activities or to whom DOT staff wishes to communicate.<sup>6</sup>

This directive is intended only to improve the internal management of the Department's Language Access Program, and does not create any right or benefit, substantive or procedural, that is enforceable by law or equity by a party against the United States, its agencies, its officers or employees, or any person. Because this document is intended for the internal management of DOT's Language Access Program, it is not intended to be cited in any judicial or administrative proceeding. Administration of the programs discussed herein is within the sole discretion of the Department and its components. The Department will create and post a process for obtaining comments regarding the implementation of this policy.

## **2. BACKGROUND**

The DOT consists of the OST and ten OAs, serving the entire United States and its territories, whose residents and travelling public constitute a diverse population of national and linguistic origins. Although many residents and members of the travelling public read, write, speak, and understand the English language, many individuals within the Department's jurisdiction have a limited ability to read, speak, write, or understand English. In DOT's 2012–2016 Strategic Plan, the Department identified the increase in non-English speaking populations who may have less exposure to safety messages as one of the demographic trends that will affect transportation safety and efficacy in the coming decade.<sup>7</sup> The Strategic Plan recognizes the access challenges that limited English proficiency presents, and this Plan is the Department's blueprint for addressing those challenges.

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<sup>5</sup> Many Departmental tasks and functions are conducted by contracted personnel and, consequently, contracted personnel may interact with LEP individuals. Components should notify contracted personnel of the obligation to ensure nondiscrimination, including compliance with Executive Order 13166. Components should consider contractors and interns having contact with LEP individuals when determining who needs to be briefed on their roles and responsibilities under the Department's language access policies, plan, and procedures.

<sup>6</sup> The Department seeks to deliver the highest standards of professional competence and ethical conduct during the course of fulfilling its mission. Consequently, Department attorneys should also consider their responsibilities under the applicable rules of professional conduct when dealing with LEP individuals.

<sup>7</sup> [http://www.dot.gov/sites/dot.dev/files/docs/990\\_355\\_DOT\\_StrategicPlan\\_508updated\\_lowres2.pdf](http://www.dot.gov/sites/dot.dev/files/docs/990_355_DOT_StrategicPlan_508updated_lowres2.pdf).

The DOT supports and administers many programs and initiatives aimed at improving the availability, quality, and efficient delivery of transportation services for all people, including older adults, people with disabilities, low-income and minority individuals, and additional people who are transportation disadvantaged. The Secretary of Transportation is the principal adviser to the President in all matters relating to Federal transportation programs and activities. The Office of the Secretary oversees the formulation of national transportation policy and promotes intermodal transportation. Other responsibilities range from negotiation and implementation of international transportation agreements, assuring the fitness of U.S. airlines, enforcing airline consumer protection regulations, issuing regulations to prevent alcohol and illegal drug misuse in transportation systems, and preparing transportation legislation. Under 49 CFR §1.70, the DOCR Director has authority to provide policy guidance to the OAs and Secretarial offices concerning the implementation and enforcement of all civil rights laws, regulations, and executive orders for which the Department is responsible; to otherwise perform activities to ensure compliance with external civil rights programs; and to review and evaluate the OAs' enforcement of civil rights authorities. Each OA, in addition, has a civil rights office.

The Department's mission depends on accurate communication with members of the public, regardless of their level of English proficiency. In compliance with Executive Order 13166, this Language Access Plan details the Department's initiatives to enhance LEP individuals' meaningful access to DOT's federally conducted programs and activities.

#### **a. Executive Order 13166**

On August 11, 2000, the President issued Executive Order 13166, "Improving Access to Services by Persons with Limited English Proficiency," 65 Fed. Reg. 50,121. On the same day, the Assistant Attorney General for Civil Rights issued initial Policy Guidance, 65 Fed. Reg.50,123.<sup>8</sup>

The Executive Order has two broad objectives. The first directs each Federal agency to develop and implement a system to ensure that LEP individuals can meaningfully access the agency's federally conducted programs and activities. The second directs Federal agencies providing Federal financial assistance to issue guidance to recipients of such assistance regarding their legal obligation to ensure meaningful access for LEP persons under the national origin nondiscrimination provisions of Title VI of the Civil Rights Act of 1964 and implementing regulations. In short, Executive Order 13166 requires the Department to improve accessibility for LEP persons in all DOT programs and activities, consistent with, and not unduly burdening, the Department's fundamental mission, and to ensure that those entities that receive DOT funding (recipients) do the same.

#### **b. Transforming Policy into Practice: The Department of Transportation Language Access Work Group**

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<sup>8</sup> Pursuant to Executive Order 13166, DOT's federally conducted language access plan must also be consistent with the standards set forth in the DOJ guidance regarding the Title VI prohibition against national origin discrimination affecting LEP individuals.

The purpose of the LAWG is to guide and oversee component efforts toward full compliance with Executive Order 13166. In accordance with the Memorandum from the Attorney General, “Federal Government’s Renewed Commitment to Language Access Obligations under Executive Order 13166,” the LAWG’s mandate is to articulate an overall framework for the Department’s compliance, including a structure within which components may develop component-specific language access plans. The LAWG consists of representatives from OAs, leadership offices, and other components. The LAWG members have responsibilities that include serving as their own component’s language access coordinator, assessing component operations for LEP needs and gaps in services, and advising the LAWG regarding best practices that should become part of Departmental policy. The DOT intends that each OA provide a representative to serve on the LAWG and replace that representative as necessary to fulfill the objectives of this Plan. The LAWG will monitor the implementation and ongoing assessment of the LAP and any component language access plans.

The LAWG began holding monthly meetings in early 2011 to assess needs and to formulate strategies to implement a language access plan throughout the Department. The Federal Coordination and Compliance Section (FCCS)<sup>9</sup> of the Civil Rights Division of DOJ provided technical assistance. Technical assistance included training regarding language access planning and the distribution of resources such as the *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs*;<sup>10</sup> *Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs*<sup>11</sup>; and *Considerations for Providing Language Access in a Prosecutorial Agency*.<sup>12</sup> LAWG members began drafting the DOT LAP during the spring of 2011 and submitted a draft plan for DOJ review in late 2011. This Plan is the product of the discussion, feedback, and ideas generated by the LAWG, DOT’s DOCR and Office of General Counsel, and DOJ. The Department intends that this Plan will evolve over time as the demands, challenges, and opportunities facing the Department change, and as the LAWG refines its understanding of language access needs, based on implementation experience, data evaluation, and stakeholder input.<sup>13</sup>

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<sup>9</sup> The Federal Coordination and Compliance Section, among other functions, is responsible for government-wide coordination with respect to Executive Order 13166. The Section serves as the Federal repository for the internal implementation plans that each Federal agency is required to develop to ensure meaningful access to its own federally conducted programs and activities, and it also reviews and approves each funding agency’s external LEP guidance for its recipients.

<sup>10</sup> Available at [http://www.lep.gov/resources/2011\\_Language\\_Access\\_Assessment\\_and\\_Planning\\_Tool.pdf](http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf).

<sup>11</sup> Available at [http://www.lep.gov/resources/081511\\_Language\\_Access\\_CAQ\\_TA\\_Guidance.pdf](http://www.lep.gov/resources/081511_Language_Access_CAQ_TA_Guidance.pdf).

<sup>12</sup> Available at [http://www.lep.gov/resources/092111\\_Prosecutors\\_Planning\\_Tool.pdf](http://www.lep.gov/resources/092111_Prosecutors_Planning_Tool.pdf).

<sup>13</sup> See Part 3(k) (Performance Measurement and Evaluation).

The Secretary's Office of Public Engagement, the DOCR, and the public affairs offices within each OA are key stakeholders because of their roles and responsibilities in programs and activities most likely to include LEP program participants.

### **c. Updating the Departmental Plan Implementing Executive Order 13166**

Since President Clinton signed the Executive Order in 2000, the need for language assistance services has expanded, the diversity of non-English languages the Department encounters continues to grow, and methods for providing language services are rapidly evolving. With over a decade of experience in complying with Executive Order 13166, the Department's approach focuses on implementing practical policies and procedures that will enable DOT staff to communicate with LEP individuals. Understanding how LEP individuals interact and communicate with the Department makes it critical to determine which language access policies and procedures apply to DOT and to its components.

In compliance with Executive Order 13166, DOT and its components began evaluating current efforts to provide meaningful access to LEP individuals. The LAWG encouraged components to use the *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs* to self-assess and to determine their own capacity and need to provide services to LEP individuals. This tool is a practical application of the four-factor analysis set out in guidance issued in accordance with Executive Order 13166, and provides components with technical assistance in creating language access plans, policies, and procedures.

The four-factor analysis is a flexible and fact-dependent standard used to determine the appropriate language assistance services to ensure a LEP individual has meaningful access to a component's programs and activities. The four-factor analysis considers: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program; (2) the frequency with which LEP individuals are exposed to the program; (3) the nature and importance of the program, activity, or service provided; and, (4) the resources available to the program and costs.<sup>14</sup> Some components with high levels of interaction with the public will have greater language assistance requirements than others based on component assessment of the range and nature of component activities and contact or potential contact with LEP individuals.

Consistent with the four-factor analysis, one of the LAWG's primary objectives is to identify and implement language assistance best practices while leveraging the Department's resources to avoid waste and duplication of effort among components. The ultimate goal is to ensure coordinated, cost-effective delivery of high quality language assistance services.<sup>15</sup>

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<sup>14</sup> DOJ Guidance, 67 Fed. Reg. at 41,459.

<sup>15</sup> The DOJ Guidance, 67 Fed. Reg. at 41,461, provides further information regarding the consideration of costs as a factor in the provision of language assistance services: "A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, 'reasonable steps' may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators,

### 3. OPERATIONAL GUIDELINES IN PROVIDING LANGUAGE ASSISTANCE SERVICES

#### a. Quality Control

Ensuring the quality and accuracy of language assistance services provided by the Department is critical to providing LEP individuals with meaningful access to Department programs and activities. Components should take reasonable steps to ensure that all staff or contracted personnel who serve as translators, interpreters, or who communicate “in-language” with LEP persons, are competent to do so. Considerations of competency in light of particular tasks may include:

- Proficiency in and ability to communicate information accurately in both English and the target language;
- Ability to identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, or sight translation), translating, or communicating fluently in the target language;
- Knowledge in both languages of any specialized terms or concepts particular to the component’s program or activity and of any particularized vocabulary used by the LEP person;
- Understanding and following confidentiality, impartiality, and ethical rules to the same extent as Department staff;
- Understanding and adhering to applicable role as interpreter, translator, or multilingual staff.

Components should also take reasonable steps to ensure that all staff or contracted personnel who serve as translators are briefed by component staff on the context and intended audience for the translated text. For example, components may elect to provide guidance with respect to style, technical word choice, phrasing, or reading level depending on the context or target audience.<sup>16</sup>

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information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ‘fixed’ later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.”

<sup>16</sup> The DOJ Guidance, 67 Fed. Reg. at 41,464, provides that “[t]ranslators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group’s

Absent exigent circumstances, the Department will avoid using family members (including children), neighbors, friends, acquaintances, and bystanders to provide language assistance services.<sup>17</sup> Likewise, components should refrain from using individual opposing parties, adverse witnesses, or victims to a dispute, as interpreters. Using family, friends, bystanders, or parties to a dispute to interpret could result in a breach of confidentiality, a conflict of interest, or inadequate interpretation.<sup>18</sup>

## **b. Translation of Department Texts**

### **1. Translating Vital Documents**

It is the policy of the Department to prioritize translation of various vital documents. Classification of a document as “vital,” depends upon the importance of the program, information, encounter, or service involved, and/or the consequence to the LEP community if the information in question is not provided in an accurate or timely manner. The determination of what documents are considered “vital” is left to the discretion of individual components, which are in the best position to evaluate their circumstances, services, and resources.

In general, there are two distinct types of vital documents: those meant for the general public or a broad audience,<sup>19</sup> and specific communications regarding a case or matter between an individual and the Department. Each component should exercise discretion in creating a process to identify and prioritize vital documents or information needing translation. Components should ensure that

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vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.”

<sup>17</sup> Components should provide staff with further guidance regarding circumstances that would rise to the level of exigent and procedures for providing language assistance services during those circumstances.

<sup>18</sup> The Department has a strong interest in ensuring *accurate* communications with LEP individuals given the Department’s mission and its substantial interest in the safety of the traveling public. The DOJ Guidance allows recipients of Federal financial assistance to use family members, friends, or other informal interpreters to provide interpretation services if the LEP individual so desires and has been specifically notified of the right to free, competent, and confidential language services. The Guidance, however, cautions that the use of informal interpreters must be “appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient’s own administrative or enforcement interest in accurate interpretation.” To minimize issues of quality assurance, confidentiality, privacy, and conflict of interest, the Department has elected to avoid using family members (including children), neighbors, friends, acquaintances, and bystanders absent exigent circumstances.

<sup>19</sup> Components may find it useful to consider the top languages spoken by LEP individuals within their region or field office when considering the target languages for translation of vital documents meant for the general public or a broad audience that includes LEP individuals. For example, according to “Language Use in the United States” (Census Bureau, April 2010), the top six non-English languages in use in the United States are, in order of prevalence, Spanish, Chinese, French/Creole, Vietnamese, Korean, and Russian.

qualified translators complete all translations. The LAWG initially prioritized the following classes of “vital” documents for translation:

- Public safety outreach or educational materials (including web-based material)  
*Examples: messaging related to impaired driving, seat belts, texting while driving, safety recalls, child safety seats, crash ratings, heatstroke, pedestrian and bicycle safety.*
- Forms or written material related to individual rights, such as notices of rights, denial, loss, or decreases in benefits or services; release or waiver forms; *Examples: (1) Aviation and Consumer Protection Division notices of complaint procedures; (2) Standard DOT Civil Rights Discrimination Complaint Form; (3) Informed Consent for Participants of Investigative Projects Consent; (4) Forms for acquisition of easements over Native American Lands for transportation project; (5) Mediation process consent forms; (6) Right-of-way certification consent form; (7) property access permission forms; (8) Request for Information letters; (8) Written notices for intent to acquire property; (9) Estimate of just compensation for the real property to be acquired; (10) Summary statement of the basis for the real property compensation offer; (11) Notice of the date by which the move is required to surrender possession of property; (12) Acquisition brochures; (13) General information notice for relocation.*
- Notices regarding the availability of language assistance services provided by the component at no cost to LEP persons.
- Claim or application forms.
- Notices of community meetings or other outreach.
- Letters of findings or notices pertaining to statutes of limitations, referrals to other federal agencies, a decision to decline to investigate a case or matter, or closure of an investigation, case or matter.
- Certain consent orders, decrees, Memoranda of Agreement, or other types of pleadings or litigation materials, within the discretion of the OA.

Under most circumstances, materials primarily directed to attorneys, advocates, architects, police, or other professionals will not be considered “vital” for these purposes. Department components or subcomponents with core litigation functions may also be subject to applicable legal standards that may vary based on pertinent Federal, State, or local rules. Components will necessarily be guided by those legal standards in making translation decisions, and this Plan does not supersede or alter those requirements. Recognizing that translations are resource and time intensive, DOT encourages its components to seek stakeholder input in determining which documents to prioritize for translation. The Department also encourages components to pursue resource-sharing and cost-saving initiatives, across DOT where possible, when translating

documents. For example, components may consider sharing glossaries of commonly used terms to reduce the cost of translating terms. Ultimately, components will assess the considerations in this Plan, including performing four-factor analyses, and make decisions within their discretion regarding how to provide meaningful access.

## **2. Translating the Department's Web Content**

Components will take reasonable steps to translate public website content and electronic documents that contain vital information about agency programs, benefits, and/or services.<sup>20</sup> Components will identify the appropriate languages for translation and determine which electronic documents contain vital information.<sup>21</sup> Translations of web content may include web pages that contain important information intended for the public, such as information about the component's jurisdiction and mission, information about how to file a complaint, information about how to contact the component, and information designed to educate individuals or communities about their rights under the law. The DOT encourages components to review the General Services Administration's (GSA) guidance on multilingual websites (<http://www.howto.gov/webcontent/multilingual>) when including multilingual content on their websites.

## **3. Additional Translation Considerations for Components that Provide Federal Financial Assistance**

Components that provide Federal financial assistance may also consider translating solicitation notices for grants or programs that may be of interest or may affect areas with large populations of LEP individuals. For example, a component may decide to translate solicitation notices into Spanish if the grant or program is aimed at benefiting individuals in Puerto Rico.

### **c. Identifying LEP Individuals**

#### **1. National Data**

The LAWG obtained preliminary data concerning the number of LEP persons in the United States using U.S. Census Bureau information. The following is taken from the Bureau summary of its 2010 report, Language Use in the United States:

The number of people 5 and older who spoke a language other than English at home has more than doubled in the last three decades and at a pace four times greater than the nation's population growth, according to report analyzing data from the 2007 American Community Survey and over a time period from 1980 - 2007. In that period, the percentage of speakers of non-English languages grew by 140 percent while the nation's overall population grew by 34 percent. Spanish

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<sup>20</sup> See also Office of Management and Budget, Executive Office of the President, memorandum for the heads of Executive departments and agencies, Policies for Federal Agency Public Websites (Dec. 17, 2004), available at <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-04.pdf>.

<sup>21</sup> See Part 3(b)(1) (Translating Vital Documents).

speakers accounted for the largest numeric increase—nationwide, there were 23.4 million more speakers in 2007 than in 1980 representing a 211 percent increase. The Vietnamese-speaking population accounted for the largest percentage increase of 511 percent (1.0 million speakers) over the same timeframe.

The report identified the states with the highest concentrations of some of the most commonly spoken non-English languages. These languages include Spanish (Texas, California and New Mexico), French (Louisiana and Maine), German (North Dakota and South Dakota), Slavic languages (Illinois, New York, New Jersey and Connecticut), Chinese (California, New York, Hawaii and Massachusetts) and Korean (Hawaii, California and New Jersey).

Of the 281 million people 5 and older in the United States in 2007, 55.4 million individuals—or 20 percent—reported speaking a language other than English at home. Among people who spoke a language other than English at home, a majority reported speaking English “very well.” The range varied from around 50 percent of the Asian or Pacific Island language speakers to 70 percent of those who spoke some other language.

The report also found:

- After English and Spanish (34.5 million speakers), Chinese (2.5 million speakers) was the language most commonly spoken at home.
- The largest group of English-only speakers (78.3 million) was ages 41 to 64, compared with the 42.3 million speakers aged 5 to 17, 72.4 million aged 18 to 40, and 32.6 million speakers 65 and over.
- Among Spanish speakers, nearly as many were native-born as foreign-born — 17.0 million versus 17.5 million, respectively. This was not the case for the other three major language groups — all three were sizably more foreign-born. Fifty-three percent of Spanish speakers reported speaking English “very well.”

## **2. Nature and Frequency of LEP Interactions at DOT**

The LAWG asked individual OAs to assess their LEP encounters and resulting needs for language assistance services. A majority of OAs completed at least preliminary needs analyses in 2012.

The LAWG examined other OA-specific language assistance solutions as potential examples of best practices that can be adopted/adapted more broadly. For instance, the mission of the Federal Motor Carrier Safety Administration (FMCSA) is to reduce crashes, injuries, and fatalities involving large trucks and buses. The FMCSA’s programs contribute to ensuring safety in motor carrier operations through enforcement of the Federal Motor Carrier Safety Regulations (FMCSR), targeting of high-risk carriers and commercial motor vehicle (CMV) drivers,

improvements in safety information systems and CMV technologies, strengthening of CMV equipment and operating standards, and efforts to increase safety awareness. The FMCSA released a Multilingual Bus Safety Consumer Checklist in the following Asian languages: Chinese (Simplified and Traditional), Japanese, Korean, and Vietnamese. Available free online, the bus safety checklist makes it possible for English and non-English speaking passengers alike to obtain important consumer information on bus companies currently in operation – their safety performance, safety ratings and consumer complaint history.<sup>22</sup> In addition, in February 2011, FMCSA issued a report of its preliminary research study designed to review English proficiency in relation to safe commercial motor vehicle operations.<sup>23</sup>

The National Highway Transportation Safety Administration (NHTSA) provides Spanish-language safety materials for community-based organizations. The NHTSA discovered that many Hispanic residents rely on bicycling and walking as their primary means of transportation. Accordingly, some populations of Hispanic origin are unfamiliar with U.S. traffic signs, signals, and practices. Language barriers may also affect their ability to travel safely on U.S. roadways. For these and other reasons, Hispanic immigrants are at a higher risk of being involved in pedestrian and/or bicycle safety crash. Hispanic adult men appear to be at particularly high risk. In an effort to reduce pedestrian and bicyclist fatalities involving Spanish speakers, NHTSA created free Spanish-language materials that teach basic pedestrian and bicycle rules and regulations. The materials include posters, brochures, and radio public service announcements (PSAs) that can be downloaded from the NHTSA Web site or requested in hard copy via fax.

The NHTSA developed other pedestrian safety resources for Chinese-, Filipino-, Vietnamese-, and Korean-speaking families. These downloadable materials include tips for parents of elementary school children on how to prevent pedestrian accidents, along with a “Walkability Checklist” families can use to determine if their neighborhoods are pedestrian-friendly. In addition, NHTSA is actively working to finalize and implement a dissemination plan to make sure that important safety messages reach Asian and Asian Pacific Islander communities.<sup>24</sup>

The LAWG will continue to coordinate and facilitate component needs assessments as it solicits stakeholder input and develops Department-wide language access strategies.

### **3. Point of First Contact**

Component staff should, at the point of first contact with an LEP individual, make reasonable efforts to conduct or arrange for an initial assessment of the need for language assistance services. Components also should make reasonable efforts to obtain such services if they are needed to effectively communicate with the individual. Component staff can determine whether a person needs language assistance in several ways:

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<sup>22</sup> <http://www.whitehouse.gov/blog/2012/06/13/how-department-transportation-helping-aapi-communities>.

<sup>23</sup> <http://www.fmcsa.dot.gov/facts-research/research-technology/report/English-Proficiency-and-Safe-Commercial.pdf>

<sup>24</sup> <http://www.whitehouse.gov/blog/2012/06/13/how-department-transportation-helping-aapi-communities>.

- Self-identification by the non-English speaker, LEP individual, or companion;
- Inquiring as to the primary language of the individual if they have self-identified as needing language assistance services;<sup>25</sup>
- Asking a multilingual staff person or qualified interpreter to verify an individual's primary language;
- Using an "I Speak" language identification card or poster (examples can be found at <http://www.justice.gov/crt/lep/resources/ISpeakCards2004.pdf>)

#### **d. Tracking and Reporting**

Each OA and the OST (and components thereof, as necessary) will collect data regarding its provision of language assistance services and provide the data to the LAWG at least biennially, so that the LAWG or its delegate may assess the effectiveness of DOT's language assistance services.<sup>26</sup> The LAWG will identify the data to be collected, which may include the number of cases, matters, or outreach initiatives in which language assistance services were provided; the primary languages of communication with the LEP persons; the cost of any language assistance services provided; and the type of language assistance provided during a case or matter, if any.

#### **e. Staff Training**

Departmental staff must know how and when to use language assistance services. For policies and procedures to be effective, components should make reasonable efforts to ensure those new and existing staff members periodically receive training on the content of the language access policy; identifying language access needs; and, providing language assistance services. The LAWG will develop a basic language access tool that components may use to train staff who may interact with LEP individuals, or whose job it is to arrange for language support services, and managers of such staff. The LAWG will make this training available through DOT Learning Management Systems. Components have the discretion to supplement or tailor this training as necessary. The LAWG will develop and review training options and make further recommendations as appropriate.

Each component should take reasonable steps to ensure that relevant staff members receive training on the Department's language access policies, Plan, and procedures. Training may include, but is not limited to:

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<sup>25</sup> Staff should avoid assumptions about an individual's primary language. Some countries have multiple distinct languages, which are often misperceived as different dialects with only a slight variance. For example, LEP persons from Latin American countries may speak an indigenous or non-Spanish language as their primary language. Staff should make every effort to ascertain an individual's primary language to ensure effective communication without making assumptions based on race, color, or national origin.

<sup>26</sup> See Part 3(k) (Performance Measurement and Evaluation).

- Identifying the language needs of an LEP individual;
- Working with an interpreter in person or on the telephone;
- Requesting documents for translation;
- Accessing and providing language assistance services through multilingual employees, in-house interpreters and translators, or contracted personnel;
- Duties of professional responsibility with respect to LEP individuals;
- Interpreter ethics;
- Reporting and tracking the use of language assistance services; and
- Tips on providing effective assistance to LEP individuals.

Components are encouraged to offer technical training to multilingual staff (e.g., interpreter ethics, interactive online language access courses, etc.) to maintain and improve their language assistance skills.

#### **f. Human Resources**

The Department values the multilingual skills of its employees. When considering human resource and hiring policies, each component should assess the extent to which language proficiency in particular languages other than English is necessary for positions or to fulfill the OAs' mission. Upon assessment of such language needs, OAs and departmental office components are encouraged to provide opportunities for professional development of language skills for all qualified employees. It is left to component discretion to identify and develop the language skills of employees who could serve as multilingual employees. However, components should take reasonable steps to develop quality control procedures to ensure that employees who are able to communicate or correspond with LEP individuals do so in an accurate and competent manner. Multilingual employees with frequent interaction with LEP individuals or whose responsibilities include the provision of language assistance services are encouraged to undergo language assessment by the Language Testing and Assessment Unit of the Federal Bureau of Investigation. Each component should track the composition of existing and new staff by languages other than English spoken and level of oral and written proficiency. Maintaining an inventory of multilingual staff is useful for future resource-sharing initiatives within and among components. Managers are encouraged to take into account the amount of time an employee has spent providing language assistance services when assessing workload and productivity.

#### **g. Procurement**

The LAWG has convened meetings between potential providers of translation and interpretation services and relevant DOT decision-makers. The LAWG and DOCR intend to continue to

facilitate these discussions. The objective is to secure contracts for one-stop nationwide translation and interpretation services. The LAWG believes that contracting with one primary provider of translation services and one primary provider of interpretation services will leverage scarce resources, simplify access, and facilitate usage tracking. Aggregating demand at the Departmental level should also promote consistency of results, avoid duplication, and aid in quality assessment and improvement. The LAWG has, however, identified significant challenges in pursuing Department-wide solutions. The primary challenges relate to resources and cost-sharing. The DOT's decentralized cost and funding structures make budgeting at the Department level for costs to be borne at least partly by components a logistical issue that may be resolved, if at all, only by bringing new participants into the discussion. Another challenge is that different technology offices and functions control website content and strategy across components. It remains an objective of the LAWG to facilitate coordination of website and other language access strategies across components and Department-wide, in part by articulating the Department's overarching language access commitment and strategies. The LAWG encourages components to tailor their language assistance offerings to specific component needs, within the broader contours of the Department's Plan.

There is no guarantee that the Department will overcome the obstacles it faces to securing single-provider contracts for translation and interpretation services that would be available to components nationwide. Accordingly, the LAWG envisions that OAs and components experiencing the most pressing needs may have to take the initiative to secure these services. The Department's Federal-style system encourages components to develop particularized solutions, in this case consistent with the principles articulated in the Plan.

If a component elects to procure language assistance services separate and apart from the Department's procurement, the component's contracting or procurement office should make reasonable efforts to ensure that any Request for Proposals or contract for language assistance services will specify responsibilities, assign liability, set pay rates, and provide for dispute resolution.<sup>27</sup> For example, contracted language assistance service providers should have or provide:

- Qualified and competent translators and interpreters, including second checks for translations;<sup>28</sup>
- Mechanisms to ensure confidentiality and avoid conflicts of interest;
- Ability to meet the component's demand for interpreters;
- Ability to meet the component's demand for translation, including the delivery of the translation in editable electronic or other required formats;

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<sup>27</sup> If a component does not have its own executive or procurement office, it should seek assistance from OST to procure language assistance services.

<sup>28</sup> The LAWG will develop Department-wide standards to help components ensure that contracted language assistance services providers are qualified and competent.

- Reasonable cancellation fees;
- On-time service delivery;
- Acceptable emergency response time;
- Rational scheduling of qualified interpreters;
- Ability to track usage and prepare reports consistent with the requirements of this Plan;
- Rapid and reliable connection to interpreters via telephone, video, or other means; and
- Effective complaint resolution when translation or interpretation errors occur.

Potential bidders for language assistance services contracts should also be required to commit to an adequate quality control process for all deliverables. The LAWG will work with GSA to identify promising practices with respect to negotiating and securing high quality language assistance services.

#### **h. Components Providing Federal Financial Assistance**

Components that provide Federal financial assistance to State and local governments and other entities, whether by way of funding, in-kind assistance, training, detail of personnel, or other assistance, should make reasonable efforts to ensure that recipients of such assistance comply with their Title VI and other nondiscrimination obligations. Components have a variety of mechanisms for securing compliance, including executing assurances of nondiscrimination, conducting periodic audits, conducting complaint-based investigations, and selecting recipients for compliance reviews.

#### **i. Notification of the Availability of Language Assistance Services**

Each component should make reasonable efforts to notify the public about its LEP policies and how to access language assistance services. Components should determine what information shall be provided in English and in appropriate non-English languages using, for example, websites, translated documents, and community-focused outreach.<sup>29</sup>

When language assistance services are not readily available at a given component or an LEP individual does not know about the availability of language assistance services, LEP individuals will be less likely to participate in or benefit from a component's programs and services. As a result, many LEP persons may not seek out component benefits, programs, information, and services; may not offer vital assistance in investigations or information that would help determine entitlement or eligibility for benefits; and may not file complaints.

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<sup>29</sup> See Part 3(b) (Translation of Department Texts).

Organizations that have significant contact with LEP persons, such as schools, faith-based organizations, community groups, and groups working with new immigrants, can provide important inputs into the language access planning process and can often assist in identifying populations for whom outreach is needed and who would benefit from the components' programs and activities where language services are provided. Components may also consider consulting with entities representing LEP interests to obtain feedback on the accuracy and quality of their language assistance services.

#### **j. Departmental and Interagency Cooperation**

Components are encouraged to collaborate with each other and other Federal agencies to share resources, improve efficiency, and standardize Federal terminology. The Department supports sharing promising practices and exploring Department-wide and interagency initiatives that could potentially streamline and improve our ability to provide meaningful access to LEP individuals. To that end, the LAWG will identify ongoing or additional subcommittees to focus on areas of common implementation concern.

#### **k. Performance Measurement and Evaluation**

Components must periodically reassess their LEP programs and, where appropriate, update their internal plans (if any) to ensure that the scope and nature of language assistance services provided reflect updated information on relevant LEP populations, component language assistance needs, changes in technology, and component experience under the Plan. Furthermore, each component should make reasonable efforts to ensure that its in-house and contract language services, directory of translated documents, signs, and web-based services meet current language needs.

At the beginning of each fiscal year, the LAWG will assess the effectiveness of component language assistance services by, for example:

- Conducting an inventory of languages most frequently encountered,
- Identifying the primary channels of contact with LEP community members (whether telephonic, in person, correspondence, web-based, etc.),
- Reviewing component programs and activities for language accessibility,
- Reviewing plans and protocols,
- Reviewing the annual cost of translation and interpreter services, and
- Consulting with internal and external stakeholders.

With a view to continuously improving language access, including refining the underlying policies and procedures articulated in this Plan, the LAWG plans to work with stakeholders to

identify the appropriate language access metrics to monitor and evaluate the Department's efforts to overcome language-based access barriers wherever we encounter them.